

## **ENCLOSURE A**

### **Baltimore District Regulatory Program**

# **Nationwide Permits Regional Conditions**

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The following regional conditions are proposed as additions to the requirements contained in the proposed Nationwide Permit (NWP) Regulations (33 CFR Part 330) which were published in the Federal Register on September 26, 2006. These proposed Regional Conditions are for the Nationwide Permit Regulations, Specific to Work in Maryland, Pennsylvania, the District of Columbia, and military installations of Northern Virginia.

The Baltimore, Pittsburgh, and Philadelphia Districts have issued State Programmatic General Permits (SPGPs) to the Commonwealth of Pennsylvania and the State of Maryland. Because SPGPs are duplicative of some NWPs and offer a more simplified and streamlined regulatory process, the Corps will suspend certain NWPs in Pennsylvania and Maryland. A complete listing of those NWPs currently suspended in Pennsylvania and the District of Columbia is found in the Baltimore District's [Special Public Notice #02-07](#) dated May 7, 2002 and a listing of those NWPs currently suspended in Maryland is found in the Baltimore District's [Special Public Notice #06-47](#) dated August 31, 2006. We anticipate updating these listings shortly to reflect the proposed changes in the NWPs. When changes to the NWP suspensions occurs, a public notice announcing the changes will be issued.

If the SPGPs become void, enjoined, suspended, revoked, or removed from effect for any reason, the District will consider reissuance of some or all of the suspended NWPs for the purpose of efficiently and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public.

The State-imposed time-of-year restriction applicable to the State Stream Classification, (or as imposed by the Pennsylvania Fish and Boat Commission on streams which are designated as stocked or wild trout streams, or support migratory fisheries in Pennsylvania) shall apply to all nationwide permit activities conducted in a water body, except when such restriction is waived by the State agency.

The Nationwide Permits are applicable to activities that are components of a single and complete project, including all attendant features, both temporary and/or permanent, as defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers, and for which a Department of the Army permit would be required. Therefore, these NWPs may not be used more than once for a single and complete project (e.g., NWP 14 cannot be used twice for one crossing, however, a NWP 14 authorization may be combined with a NWP 18 authorization for a single crossing). In addition, each of the NWPs may be used once as part of a single and complete project.

#### **Nationwide Permit General Condition #2 *Aquatic Life Movement***

**Regional General Condition 2a** - The permittee shall apply any appropriate time-of-year restrictions to protect the aquatic resources present within the project area and downstream of the project site. See attached addresses of agencies for information on state imposed time-of-year restrictions (Numbers 7, 8 & 9 for Pennsylvania; Numbers 10, 12, & 13 for Maryland; and Number 15 for Washington, DC).

### **Nationwide Permit General Condition #27 Pre-Construction Notification**

The following Regional General Conditions are incorporated as part of the terms and conditions of NWP General Condition 27, *Pre-Construction Notification*. It is applicable to all nationwide permits (NWPs) where a pre-construction notification (PCN) is submitted to the District Engineer (DE). This includes the following: (a) those NWPs requiring notification to the DE pursuant to the NWP general conditions #19 and #27, (b) those NWPs requiring notification to the DE pursuant to a regional condition, and (c) any other pre-construction notifications to the DE where an applicant has requested verification of an NWP authorization. The NWPs that require a PCN include NWPs \*3, \*5, 7, 8, \*10, 11, 12, \*13, \*14, \*15, 17, 18, \*19, 21, \*22, 23, \*25, 27, 28, 29, 30, 31, 33, 34, 35, \*36, 37, 38, 39, 40, \*41, 42, \*43, 44, A, B, D, E, and F.

*\*These NWP activities require notification under certain circumstances. Review the NWP authorization, general conditions 19 & 27, or regional conditions to identify these circumstances.*

### **Regional General Conditions 27a**

1. A pre-construction notification (PCN) shall be submitted to the DE for any proposed activity, which would result in impacts, temporary or permanent, to jurisdictional wetlands in the following counties in Pennsylvania: Adams, Berks, Bucks, Chester, Cumberland, Delaware, Franklin, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, York, and Schuylkill (Swatara Creek Watershed).
2. A pre-construction notification (PCN) shall be submitted to the DE for any proposed activity, which would be constructed in the following waterways: Allegheny River (from Kinzua Dam to the Ohio River)( Armstrong, Clarion, Forest, Venango, and Warren Counties); Conewango Creek (Warren County); French Creek (Crawford, Erie, Mercer, and Venango Counties); Conneaut Outlet (Crawford County); Conneauttee Creek (Crawford County); LeBoeuf Creek (Erie County); Muddy Creek (Crawford); Shenango River, Pymatuning Reservoir to Big Bend (Crawford and Mercer Counties); Delaware River (Monroe, Pike, and Wayne Counties). Concurrently, a copy of any PCN to the District Engineer must be forwarded to the U.S. Fish and Wildlife Service (See attached addresses of agencies, Number 2).
3. All pre-construction notifications (PCNs) to the District Engineer shall include all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the nationwide permit conditions:
  - a) Plan(s) of the proposed work on 8-1/2 by 11 inch paper which includes a location map; longitude and latitude; representative photographs of the project site, including wetlands, if present; a delineation of areas within Federal jurisdiction, including wetlands, for the entire project area; existing water depths; depth of any structure(s) below mean low water; height of any structure(s) above mean high water; the maximum distance that the structure(s) or fill will extend channelward of the existing shoreline; the width of the waterway at the project site, the location of any dredged material disposal area, the distance from the edge of any navigation channel and the location of any temporary work, structures, vessels, or fills required for the construction, a copy of any previous Federal or State approvals, and the location and nature of any submerged aquatic vegetation (e.g., eel grass, *Zostera marina*). The PCN shall include a wetland and stream delineation for the entire project area, identified on a scaled plan of the project site. All existing or proposed work in areas of Federal jurisdiction shall be identified on the same-scaled plan. Further, at the discretion of the District Engineer, the Corps may consider a PCN incomplete if it is determined that field verification of a wetland delineation is required.
  - b) Evidence that the prospective permittee has already contacted and received a response from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service concerning any Federally listed Threatened and Endangered Species that may be affected

by the proposed activity. The addresses for these agencies are attached ( Numbers 2 & 4 for Pennsylvania; Numbers 3 & 5 for Maryland and Washington, DC).

- c) Documentation from the appropriate State agency indicating whether the proposed project is located within a State Natural Heritage site, Outstanding National Resource Water, or National Estuarine Research Reserve. (For further information see NWP general condition 25). The addresses for these agencies are attached ( Numbers 2, 4, & 7 for Pennsylvania; Numbers 3, 5, 10, 12, & 13 for Maryland; and Numbers 3, 5, & 15 for Washington, DC).
  - d) A written statement describing the following:
    - i. what measures have been taken to avoid impacts to aquatic resources
    - ii. what measures have been taken to avoid and/or minimize any discharges into Waters of the United States
    - iii. what measures have been developed to compensate for the loss of Waters of the United States, including jurisdictional wetlands
4. When a PCN is required to be submitted to the District Engineer, the Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not begin the activity until notified in writing by the District Engineer (normally within 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

#### **Nationwide Permit #3 Maintenance**

##### **Regional Conditions**

1. Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer for any discharge under NWP 3(a) proposing the use of equipment to move material from or across a stream channel as part of the proposed activity for repair, rehabilitation, or replacement (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.
2. Under the terms of this authorization, the removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 50 feet in any direction from the structure, unless specifically authorized by the District Engineer.
3. Any PCN to the DE must clearly describe any activity proposing the use of equipment to move material from or across a stream channel.

#### **Nationwide Permit #4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**

##### **Regional Condition**

This nationwide permit does not authorize activities that cause interference with navigation. No structure can extend into an anchorage area, customary boating channel, navigation fairway, marked, lighted, charted, or Federal Navigation Channel.

#### **Nationwide Permit #5 Scientific Measurement Devices**

##### **Regional Condition**

Prior to doing the work, the permittee must submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer for any activity, proposing the discharge of greater than 10 cu. yds of dredge or fill material for the construction of small weirs and flumes (See general condition 27 and regional

general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

#### **Nationwide Permit #11 Temporary Recreational Structures**

##### **Regional Conditions**

1. Prior to doing the work, the permittee must submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer in accordance with the current Corps of Engineers permit application procedures for that locality (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.
2. For the Delaware River in Pennsylvania, this NWP is applicable only to structures associated with discrete or specific events.

#### **Nationwide Permit #12 Utility Line Activities**

##### **Regional Conditions**

1. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer for any proposed activity in waters of the United States, including jurisdictional wetlands, in accordance with the current Corps of Engineers permit application procedures for that locality (See general condition 27 and regional general conditions 27a). The prospective permittee shall not proceed until notified in writing by the District Engineer (normally within 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.
2. The stockpiling or sidecasting of excavated material in wetlands shall not exceed 30 days, unless a longer period of time is specifically reviewed and approved by the District Engineer. Any excavated or stockpiled materials shall be stabilized with straw bales, silt fence, or other acceptable methods to prevent reentry into any waterway or wetland.
3. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.
4. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be maintained between the utility line and the waterway to avoid or minimize potential future impacts to Waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.
5. The top of the cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed in rock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. When crossing a maintained navigation channel, the requirements are a minimum of eight feet between the top of the cable, encasement, or pipeline and the authorized depth of the navigation channel. For maintained navigational channels, where the utility line is placed in rock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained.
6. Where the bedding material around the utility line located in a wetland and/or stream would promote drainage of the wetland or stream, clay plugs, impervious membranes, or other state of the art methods shall be placed in the trench to reduce drainage through the backfill material.

7. Where water or sewer line installation is proposed in an existing subdivision and would extend service to residential lots containing wetlands which would be filled to construct new homes, the permittee must submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer (See general condition 27 and regional general conditions 27a).
8. This nationwide permit does not authorize activities on the Chesapeake and Delaware Canal, the Delaware River downstream of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.

#### **Nationwide Permit #13 Bank Stabilization**

##### **Regional Conditions**

1. The project design shall minimize the placement of rock and maximize the use of vegetation and organic materials such as root wads to the extent practicable. Riparian plantings shall be included in all project designs to the extent practicable.
2. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any waters of the U.S., including jurisdictional wetlands.

#### **Nationwide Permit #14 Linear Transportation Projects**

##### **Regional Conditions**

1. Any activity proposing a crossing of a stream or open water shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. This design requirement must include an on-site inspection of the particular stream or waterbody to determine if it is experiencing erosion, sedimentation, or accretion rates that would alter the bottom elevation. Where a series of culverts are used, only those cells or culverts which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows.
2. For public linear transportation projects where the prospective permittee is proposing a new crossing, proposing the replacement of an existing bridge structure with a culvert, or proposing the dualization of an existing facility, the permittee shall include an on-site alternatives analysis that considers the impact of various size and type structures (i.e. bridges, culverts, pipes, and bottomless culverts) on the following:
  - a. Wetland functions, values, acreage
  - b. Wildlife corridor
  - c. Floodplain functions, including, but not limited to, flood storage and nutrient uptake
  - d. Existing or proposed hiker/biker trails and equestrian trails
  - e. Fish passage
  - f. Fisheries habitat and food chain support
  - g. Threatened and Endangered Species
  - h. Stream morphology
  - i. Hydraulic analysis
  - j. Cost
  - k. Consistency with Master Plans
  - l. Movement of debris
3. The crossing must not be used as a berm for a permanent impoundment or in-stream management of stormwater.

#### **Nationwide Permit #18 Minor Discharges**

##### **Regional Condition**

Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer for any proposed activity in waters of the United States, including jurisdictional wetlands, in accordance with the current Corps of Engineers permit application procedures for that locality (See general

condition 27 and regional general conditions 27a). The prospective permittee shall not proceed until notified in writing by the District Engineer (normally within 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

**Nationwide Permit #23 Approved Categorical Exclusions**

**Regional Condition**

Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer for any proposed activity in waters of the United States, including jurisdictional wetlands, in accordance with the current Corps of Engineers permit application procedures for that locality (See general condition 27 and regional general conditions 27a). The prospective permittee shall not proceed until notified in writing by the District Engineer (normally within 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

**Nationwide Permit #27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities**

**Regional Condition**

Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer for any activity proposing a discharge into waters of the United States, including jurisdictional wetlands, in accordance with the current Corps of Engineers permit application procedures for that locality (See general condition 27 and regional general conditions 27a). The prospective permittee shall not proceed until notified in writing by the District Engineer (normally within 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

**Nationwide Permit #28 Modifications of Existing Marinas**

**Regional Condition**

Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The application must also include plans showing the configuration of existing structures. For projects located on a waterway containing an authorized Federal Navigation Channel, the permittee must also include the distance to the edge of the authorized channel. The District Engineer will add special conditions, where necessary, to ensure those adverse navigation impacts are minimal. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally within 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

**Nationwide Permit #29 Residential Developments**

**Regional Conditions:**

**1. Residential Subdivisions (Applicable to the District of Columbia, Maryland, and Pennsylvania):**

- a) This NWP does not authorize the construction of ponds, including stormwater management facilities or recreational ponds. In addition, it does not authorize the construction of sewage disposal systems.
- b) Under the terms of this NWP, wetlands, which are located within the platted lot lines of any residential subdivision, will be considered adversely affected, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity.

**2. Individual Lots (Applicable in Pennsylvania only)**

- a) A copy of the PCN required under the terms of the NWP must also be concurrently forwarded to the U.S. Fish and Wildlife Service (FWS) for any activity proposing a discharge into Waters of the United States, including jurisdictional wetlands. The District Engineer will make a final determination regarding the proposed project with consideration of FWS

comments. If the FWS has not responded to the District Engineer after 25 days of receipt of the PCN, the District Engineer will proceed with review and verification of the project.

- b) The total area of non-tidal Waters of the United States, including wetlands, lost as a result of the discharge shall not exceed 40% of the total lot area, except for those lots which are less than 0.25 acres in size, in which case the loss of non-tidal Waters of the United States, including wetlands shall not exceed 0.10 acres. In no circumstances may the loss of non-tidal Waters of the United States including wetlands resulting from a discharge authorized by this NWP exceed 0.25 acres. Loss is defined to include any filled area previously permitted, the proposed fill area, and any other Waters of the United States including wetlands that are adversely affected by flooding, excavation, or drainage as a result of the project. The following table provides examples of the permit authorization acreage limitations in effect where the lot size is equal to or greater than 0.25 acres.

Total Acreage Of Lot	40% of Lot	Maximum Loss Area Authorized
0.25 acre	X 0.40	= 0.10 acre
0.33 acre	X 0.40	= 0.13 acre
0.50 acre	X 0.40	= 0.20 acre
>0.50 acre	X 0.40	= 0.25acre

- c) This NWP may be used only once by an individual.
- d) This NWP may only be used for a single-family home for a personal residence by an individual who purchased the lot prior to November 21, 1991.
- e) This NWP may only be used on residential lots with access to a central sewage system which is in place and operational at the time of notification, except in cases where the discharge is for the expansion of an existing residence.
- f) This NWP does not authorize the discharge of fill in Waters of the United States, including wetlands, for the installation or expansion of on-lot septic systems.
- g) This NWP does not authorize the loss of Waters of the United States, including wetlands, located within a 100-year floodplain. Absent any established maps or other information to the contrary, the 100-year floodplain is assumed to extend fifty (50) feet landward from the top of the stream bank.
- h) The pre-construction notification (PCN) to the District Engineer shall include a sketch plan depicting the proposed footprint of fill. The sketch plan shall also include the property dimensions; building setbacks; wetland boundaries; acreage of the proposed wetland loss; location and acreage of any previously permitted wetland fills; location(s) of any streams, drainage courses, and floodplain limits; location of proposed house, driveway, and utilities; and a mitigation proposal (see condition 7 below). The wetland boundary will be determined by a trained wetland delineator. The Corps of Engineers or the Pennsylvania Department of Environmental Protection will provide this service, if requested in writing.
- i) Individuals who wish to use this NWP must compensate for the loss of Waters of the United States including wetlands by one of the following, where the loss of Waters of the United States, including wetlands would be greater than 0.05 acres:
- construct a replacement wetland in accordance with a plan approved by the Corps of Engineers;

- ii. participate in a wetland mitigation bank approved by the Corps of Engineers;
- iii. participate in the "in lieu fee" program in Pennsylvania known as the Pennsylvania Wetland Replacement Project in conjunction with the National Fish and Wildlife Foundation Fund Project 95-096. Monetary contributions to the Pennsylvania Wetland Replacement Project shall be as follows:

Acreage of Wetland Impact	Amount of Contribution
Greater than .05 acre up to .10 acre	\$500.00
Greater than .10 acre up to .20 acre	\$1000.00
Greater than .20 acre up to .25 acre	\$2,500.00

**Nationwide Permit #30 Moist Soil Management for Wildlife**  
**Regional Condition**

Prior to doing the work, the permittee must submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

**Nationwide Permit #33 Temporary Construction, Access and Dewatering**  
**Regional Conditions**

1. Earthen cofferdams and cofferdams of dredged material shall not be used due to the problem with sedimentation of the waterway during installation and removal of the earthen (fine material) component. Causeways shall consist of only clean rock.
2. Causeways and cofferdams shall extend no more than 1/2 the width of the waterway, and sufficient conveyance of the waterways shall be provided to preclude damage to property or the environment resulting from increased water surface elevations.
3. Temporary crossings of wetlands shall be avoided if an alternate location is possible. Where wetland impacts cannot be avoided, timber mats, construction pads, geotextiles or other similar devices shall be used to avoid consolidation of temporary road materials into the wetland substrate.
4. The pre-construction notification (PCN) shall include a restoration plan for disturbed wetlands and streambanks which includes revegetation with species similar to those that preexisted.

**Nationwide Permit #35 Maintenance Dredging of Existing Basins**  
**Regional Conditions**

Prior to doing the work, the permittee must submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer. The application must also include a drawing indicating existing depths for the project site and nearby channel, and a survey of submerged aquatic vegetation in the



vicinity of the dredge site, and plans indicating the dimensions (width and depth) and the approximate date of previous dredging, and identifying the location of the upland disposal site(s). Maintenance dredging authorized by nationwide permit #35 shall be limited to the dimensions (width and depth) of previously authorized dredging. This nationwide permit does not authorize activities on the Chesapeake and Delaware Canal, the Delaware River downstream of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.

#### **Nationwide Permit #36 Boat Ramps**

##### **Regional Conditions**

##### **(Applicable in Maryland and the District of Columbia)**

1. The length of boat ramps authorized by nationwide permit #36 shall not exceed 30 feet channelward of the mean high water line nor 25% of the width of the waterway.
2. Where the water depth at the proposed ramp is less than 2 feet at mean low water, the permittee must submit a pre-construction notification (PCN) (Corps-only Notification) to the District Engineer (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.
3. Construction material must be clean rock or stone free of fine materials such as silt, clay or sand to preclude more than minimal detrimental impacts to the waterway from turbidity and sedimentation effects.

##### **(Applicable in Pennsylvania)**

1. This nationwide permit does not authorize activities on the Chesapeake and Delaware Canal, the Delaware River downstream of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.
2. Construction material must be clean rock or stone free of fine materials such as silt, clay or sand to preclude more than minimal detrimental impacts to the waterway from turbidity and sedimentation effects.

#### **Nationwide Permit #39 Commercial and Institutional Developments**

##### **Regional Conditions**

1. This NWP does not authorize the construction of ponds, including stormwater management facilities or recreational ponds. In addition, it does not authorize the construction of sewage disposal systems.
2. Under the terms of this NWP, wetlands, which are located within the platted lot lines of any commercial, or institutional development, will be considered adversely affected, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity.

#### **Nationwide Permit #40 Agricultural Activities**

##### **Regional Conditions**

1. Waters of the U.S., including wetlands, must be avoided where non-waters of the U.S. alternatives are available.
2. Pond construction must be of the minimum size required for the farming use.
3. In stream ponds should be avoided to the maximum extent practicable

#### **Nationwide Permit #42 Recreational Facilities**

##### **Regional Condition**

##### **(Applicable in Pennsylvania)**

A copy of the pre-construction notification (PCN) required under the terms of the NWP must also be concurrently forwarded to the U.S. Fish and Wildlife Service (FWS) for any activity proposing a discharge into Waters of the United States, including jurisdictional wetlands. The District Engineer will make a final determination regarding the proposed project with consideration of FWS comments. If the FWS has not responded to the District Engineer after 25 days of receipt of the PCN, the District Engineer will proceed with review and verification of the project.

#### **Nationwide Permit B Discharges in Ditches and Canals**

##### **Regional Condition**

Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer for any proposed activity in waters of the United States, including jurisdictional wetlands (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

#### **Nationwide Permit D Commercial Shellfish Aquaculture Activities**

##### **Regional Condition**

Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer for any proposed activity in waters of the United States, including jurisdictional wetlands (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

#### **Nationwide Permit E Coal Remining Activities**

##### **Regional Condition**

The pre-construction notification (PCN) to the District Engineer shall also include detailed site development, mining, and reclamation plans (as required by others) for any proposed activity in non-tidal waters of the United States, including jurisdictional wetlands (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

#### **Nationwide Permit F Underground Coal Mining Activities**

##### **Regional Condition**

The pre-construction notification (PCN) to the District Engineer shall also include detailed site development, mining, and reclamation plans (as required by others) for any proposed activity in non-tidal waters of the United States, including jurisdictional wetlands (See general condition 27 and regional general conditions 27a). The Corps' review period shall commence with the receipt of a permit application, at the Corps District Office, which has been completed in accordance with the established Corps of Engineers permit application procedures for that locality. The prospective permittee shall not proceed until notified in writing by the District Engineer (normally 30 days) that the activity may proceed under the nationwide permit with any special conditions imposed by the District Engineer.

**SPECIAL NOTES:**

1. Where the State or the District of Columbia (District) has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the State/District to obtain an activity specific review and approval by the State/District prior to submitting any required pre-construction notification (PCN) to the Corps of Engineers.
2. The attached addresses should be used for notification to those agencies required by regional conditions.

U.S. Army Corps of Engineers

October 2006

**GARSKOF/CENAB-OP-RPA  
HOBBS/CENAB-OP-R**

## List of Agencies:

(1)Environmental Protection Agency  
1650 Arch Street - 3ES42  
Philadelphia, Pennsylvania 19103-2029

(2)U.S. Department of the Interior  
Fish and Wildlife Service  
315 South Allen Street, Suite 322  
State College, Pennsylvania 16801-4850

(3)U.S. Department of the Interior  
Fish and Wildlife Service  
177 Admiral Cochrane Drive  
Annapolis, Maryland 21401

(4)National Marine Fisheries Service  
Habitat Conservation Division  
74 Magruder Road, Sandy Hook  
Highlands, New Jersey 07732

(5)National Marine Fisheries Service  
Chesapeake Bay Office  
410 Severn Ave., Suite 107A  
Annapolis, Maryland 21403

(6)Pennsylvania Historical & Museum  
Commission  
Bureau of Historic Trust  
P.O. Box 1026  
Harrisburg, Pennsylvania 17110

(7)Pennsylvania Fish & Boat Commission  
Bureau of Fisheries & Engineering  
450 Robinson Lane  
Bellefonte, Pennsylvania 16823-9616

(8)Pennsylvania Department of  
Environmental Protection  
Division of Waterways, Wetlands & Erosion  
Control  
P.O. Box 8775  
Harrisburg, Pennsylvania 17105-8775

(9)Pennsylvania Game Commission  
2001 Elmerton Avenue  
Harrisburg, Pennsylvania 17110-9797

(10)Maryland Department of Natural  
Resources  
Environmental Review, B-3  
Tawes State Office Building  
580 Taylor Avenue  
Annapolis, Maryland 21401

(11)Maryland Historical Trust  
Division of Historical & Cultural Programs  
100 Community Place  
Crownsville, Maryland 21032-2023

(12)Maryland Department of the  
Environment  
Water Resources Administration  
Tidal Wetlands Division  
Montgomery Park Business Center, Ste 430  
1800 Washington Boulevard  
Baltimore, Maryland 21230-1708

(13)Maryland Department of the  
Environment  
Non-tidal Wetlands and Waterways  
Division/CZC Unit  
Montgomery Park Business Center, Ste 430  
Baltimore, Maryland 21230-1708

(14)District of Columbia State Historic  
Preservation Officer  
441 4<sup>th</sup> Street, NW  
Washington, DC 20002

(15)Department of Health  
Environmental Health Administration  
Bureau of Environmental Quality  
Water Quality Division  
Water Quality Control Branch  
51 N Street, NE, 5<sup>th</sup> Floor  
Washington, DC 20002